

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:) Chapter 9
)
CITY OF DETROIT, MICHIGAN,) Case No. 13-53846
)
) Hon. Steven W. Rhodes
Debtor.)
) Related to Doc. No. 6982, 6990

**THE DETROIT RETIREMENT SYSTEMS' RESPONSE IN OPPOSITION
TO SYNCORA'S MOTION IN LIMINE BARRING THE CITY AND PLAN
SUPPORTERS FROM INTRODUCING EVIDENCE REGARDING THE
POTENTIAL PERSONAL HARDSHIP OF PENSIONERS [DKT. NO. 6982]**

-AND-

**FGIC'S MOTION IN LIMINE TO PRECLUDE THE INTRODUCTION OF
EVIDENCE OR TESTIMONY REGARDING CERTAIN MATTERS
PREVIOUSLY DEEMED IRRELEVANT BY THE COURT OR THE CITY
OF DETROIT [DKT. NO. 6990]**

The Police and Fire Retirement System of the City of Detroit (the “FRS”) and the General Retirement System of the City of Detroit (the “GRS”) (together, the “Retirement Systems”) hereby submit the following in opposition to Syncora’s Motion *in Limine* Barring the City and Plan Supporters from Introducing Evidence Regarding the Potential Personal Hardship of Pensioners [Dkt. No. 6982] (“Syncora’s Motion”) and FGIC’s Motion *in Limine* to Preclude the Introduction of Evidence or Testimony Regarding Certain Matters Previously Deemed Irrelevant by the Court or the City of Detroit [Dkt. No. 6990] (“FGIC’s Motion”)

(collectively, the “Motions”).

Preliminary Statement

1. Syncora and FGIC both argue in their Motions that the City (and any Plan Supporters) should be precluded from arguing that the “personal hardship” of individual pensioners is relevant to the issue of unfair discrimination. In doing so, Syncora and FGIC cite remarks of the Court, but take them completely out of context and confuse (a) the concept of the Court not considering “personal hardship” and the impact of the Plan on retirees and active employees *as creditors vis-à-vis other creditors*, with (b) the concept of the Court considering the City’s *business justification* for treating retirees and active employees differently than other creditors in light of their place within and their impact on the City’s revitalization. How the personal hardships of these individual creditors may impact the City’s overall reorganization efforts *is* a relevant consideration for the City and this Court.

2. What is missing in the analysis by Syncora and FGIC is a recognition of the “business” in which the City is engaged. Its customers are its residents and businesses. If residents (including retirees and active employees) are not being adequately provided for, they will leave the City for a better provider of municipal services. If the City is losing its workforce in this manner and cannot provide effective services to residents and businesses, and if the streets are lined with

impoverished retirees dependent upon public welfare and unable to buy services and properly maintain residential neighborhoods, then it will lose existing businesses and will not be able to attract investment and new businesses. Under these circumstances, the “business” of the City will fail.

3. In fact, in the very same discussion with the Court that Syncora and FGIC rely upon, this Court clearly recognized that individuals’ personal hardship might be relevant in the context of the City’s business justifications for disparate treatment of creditors:

I do not want and don’t think it relevant to consider a series of retirees or employees, for that matter, testifying about their individual hardship. In my view, neither fair and equitable nor unfair discrimination has ever in any bankruptcy case considered the impact of a plan on a creditor. . . *The issue always is the business justification for the treatment from the debtor’s perspective. Now, to the extent that issue encompasses consideration of hardship, I would leave it to the proponents of the plan to argue and prove that*, but that’s a much. . . broader and differently focused question than just plain hardship of retirees.¹

Dkt. No. 6982-8, Hrg. Trans. 81:9-21, August 6, 2014 (emphasis added).

4. Notably, the position of the Court stated above is precisely what undersigned counsel for the Retirement Systems articulated at that hearing as well:

I just want to make sure that it was clear or understood by all parties that if there is information or an argument to be made as to the impact more broadly on retirees, not just as creditors but more specifically as a part of the entity that we are trying to rehabilitate, that that is

¹ Both FGIC and Syncora omitted this portion of the Court’s statement from the transcript citations in their Motions.

relevant and fair game in the context of a Chapter 9.

Dkt. No. 6982-8, Hrg. Trans. 81:25-82:6, August 6, 2014.²

5. Accordingly, it should have been clear to both Syncora and FGIC at least as of August 6, 2014 that the City's consideration of the impact of the economic hardship on individuals in the aggregate upon the "business" of the City, in proposing disparate treatment of Class 10 and 11 creditors under the Plan, was indeed relevant. If either Syncora or FGIC were confused about the parameters of the relevancy of "personal hardship" in this case, they should have raised the issue on August 6, rather than wait and file a motion *in limine* weeks later claiming prejudice. Therefore, FGIC's Motion and Syncora's Motion must be denied.

Standard of Review

6. Motions *in limine* are subject to a "high standard" and are appropriate only when evidence is "clearly inadmissible." *Broad St. Energy Co. v. Endeavor Ohio, LLC*, 2014 U.S. Dist. LEXIS 60041, *5 (S.D. Ohio April 30, 2014). Under the Federal Rules of Evidence, evidence is "relevant" if: "(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Fed. R. Evid. 401. Evidence must relate to a "matter or issue in dispute in the case" in order to be relevant.

² See also undersigned counsel's statement regarding the relevance of "hardship on a macroscopic level to . . . the community as a whole." Dkt. No. 6982-8, Hrg. Trans. 11:6-11, August 6, 2014.

United States v. Dunn, 805 F.2d 1275, 1281 (6th Cir. 1986). “Whether an issue is properly in dispute is, of course, determined by the applicable substantive law.” Fed. R. Evid. 403 Advisory Committee’s Note.

Response

7. Under the “applicable substantive law” relating to unfair discrimination, evidence relating to the personal hardships of thousands of the municipal debtor’s citizens and active workforce—when viewed in the aggregate and from the City’s perspective—is clearly relevant.

8. By its own terms, section 1129(b)(1) “prohibits only *unfair* discrimination, not all discrimination.” *In re Aztec Co.*, 107 B.R. 585, 588-89 (Bankr. M.D. Tenn. 1989) (emphasis added). Implicitly, then, some discrimination is “fair.” *In re Simmons*, 288 B.R. 737, 747-48 (Bankr. N.D. Tex. 2003) (citing 7 Collier on Bankruptcy ¶ 1129.04[3]) (noting it is “necessarily inherent in the term ‘unfair discrimination’ . . . that there may be ‘fair’ discrimination in the treatment of classes of creditors.”).

9. Indeed, a “bankruptcy court can permit discrimination when the facts of the case justify it.” *Brinkley v. Chase Manhattan Mortg. & Realty Trust (In re LeBlanc)*, 662 F.2d 872, 879 (5th Cir. 1980). A plan does not unfairly discriminate if there is “a rational or legitimate basis for discrimination” and if the discrimination is “necessary for reorganization.” *In re Dow Corning Corp.*, 255

B.R. 455, 537-38 (E.D. Mich. 2000) (citing *In re Crosscreek Apartments, Ltd.*, 213 B.R. 521, 537 (Bankr. E.D. Tenn 1997)). Generally, “there is great discretion left to the bankruptcy court to determine whether the discrimination is unfair.” *In re Cooper*, No. 08-20473, 2009 WL 1110648, *5 (Bankr. N.D. Tex. April 24, 2009).

10. Examples of situations where courts have found that the “facts of the case justify” discrimination or where the discrimination is “necessary for reorganization” include cases involving union and employee relations as well as trade creditors, based upon the notion that these groups of creditors are often integral in the debtor’s reorganization efforts and the debtor needs “buy-in” from these constituencies. *See, e.g., Aetna Cas & Surety Co. v. Clerk (In re Chateaugay Corp.)*, 89 F.3d 942, 949 (2d Cir. 1996) (finding a 60% disparity fair where debtor paid workers’ compensation claims in full, while providing only a 40 percent recovery for insurance company claims of the same priority, in part, due to concerns over future labor relations); *In re Creekstone Apartments Assocs., L.P.*, 168 B.R. 639, 644 (Bankr. M.D. Tenn. 1994) (upholding a preferential recovery of 90 percent for trade creditors because their “services and products were essential to the successful operation” of the reorganized debtor).

11. Moreover, in the unique context of a Chapter 9 case, the special needs of the municipality *as a municipality* must be taken into account. *See 6 Collier on Bankruptcy*, ¶ 900.01[2] (Alan N. Resnick & Henry J. Somme reds., 16th ed. rev.)

(“[U]nlike other Chapters, Chapter 9 does not attempt to balance the rights of the debtor and its creditors, but rather, to meet the special needs of a municipal debtor.”). Thus, the overall societal impact of the debtor’s plan can be considered by the Court. *See e.g., In re Barnwell County Hosp.*, 471 B.R. 849, 869-70 (Bankr. D.S.C. 2012) (affirming the debtor’s plan and noting “of particular importance to the Court is that the Plan preserves the availability of healthcare services to citizens and patients in the County”); *In re Corcoran Hosp. Dist.*, 233 B.R. 449, 454 (Bankr. E.D. Cal. 1999) (describing the area’s economic woes and noting that the debtor/hospital “is very important to the community of Corcoran” and that it was “an essential element to the survival of Corcoran as a community”).

12. This Court has been consistent in stating that the perceived needs of the **debtor** (as opposed to the needs of the individual creditors) are a relevant consideration: “[I]n the case law I’m familiar with where the issue is the business justification for whatever discrimination is in the plan is determined based on the **business needs of the debtor**, not the business or financial needs of the creditors.” Dkt. No. 5697, Hrg. Tr. 104:2-6, June 26, 2014 (emphasis added); *see also* Dkt. No. 6982-8, Hrg Tr. 81:9-17, August 6, 2014 (“The issue always is the business justification for the treatment from the debtor’s perspective.”)

13. In this case, the City has articulated a need for a class of its creditors—the Holders of Pension Claims—to be treated in a manner that will

prevent the creation of a caste of socially indigent citizens that would force the City to expend social services funds it does not have. *See, e.g.*, City's Consolidated Reply, Dkt. No. 5034 at ¶ 87 ("Preferential treatment of Pension Claims also is in recognition of the personal hardship that will befall pensioners, many of whom are also residents of the City... This hardship—if severe enough—can also strain City resources by causing City social service costs to rise.").

14. The City has also articulated a need to attract new employees and to encourage the thousands of employees it already has to remain engaged and productive moving forward, despite drastic cuts to their wages, pensions, and health benefits. *See, e.g.*, City's Consolidated Reply, Dkt. No. 5034 at ¶ 62 ("The Plan's treatment of Pension Claims minimizes the adverse impact of the pension benefit reductions on the City's current employees, whose ongoing motivation and cooperation (as well as that of the unions that represent the employees) is vital to the City's recovery and to the health, welfare, and safety of its residents.").

15. Keeping masses of citizens off of the poverty lines and keeping a municipal workforce "on the job" so they can continue providing essential city services is precisely the sort of "business justification," from the City's perspective, that is a relevant factor in support of the alleged preferential treatment afforded to actives and retirees.

16. For example, as the City's Director of Human Resources and Labor

Relations (Michael Hall) testified, the City is concerned regarding the impact that pension and healthcare reductions will have on its active workforce. (Exhibit 1 attached hereto, Michael Hall Dep. at 133-146). Mr. Hall heard concerns from “union leadership, workers in the police, fire, employees that work in City Hall, people, employees that work in DDOT.” *Id.* at 145. Others expressed “concern” about pension issues and how the changes would impact them long-term and short-term. *Id.* at 145, 149. The ASF Recoupment portion of the Plan, in particular, had a negative impact on the City’s workforce and caused “frustration” amongst employees. *Id.* at 162-63. This is exactly the sort of “personal hardship” evidence that *is* relevant—on a macroscopic level, the aggregate hardship felt by an entire active workforce, which could potentially derail the City’s entire reorganization effort.

17. Similarly, Mayor Duggan testified that while he did not objectively measure whether pension cuts adversely impacted employee productivity, it certainly “was a source of great anxiety. . . around all of the employment centers” and this “level of anxiety didn’t help anything.” (Exhibit 2 attached hereto, Duggan Dep. at 125-26). Duggan explained that what he looks at is “what motivates performance, and certainly the feeling that the employer is treating them and dealing with them fairly is a huge impact on people’s performance, and I’m trying to create an environment [at the City] where people feel like they’re being

treated fairly. Certainly a number of these things have caused them to feel they're being treated unfairly, and I see it in every forum that I go to[.]" *Id.* at 126. Duggan also specifically pointed to the fact that the pension reductions ended up being *less* drastic under the current Plan as a reason why the active workforce feels as though they are currently being treated more fairly. *Id.* at 126-127. When asked if the reduced cuts to retirees had any impact on employee morale, he answered that he's "got 9,000 employees" and while he has not officially surveyed them all, "[t]here is a sense of, I think, hope in the city now that wasn't there six months ago." *Id.* at 127-28. This is precisely the sort of permissible business justification that may be considered by the Court—and is exactly what the City was hoping to achieve. *See* City's Consolidated Reply, Dkt. No. 5034 at ¶ 65 ("by providing a relatively enhanced recovery to holders of Pension Claims, the City is helping to ensure the success of some of its most vital relationships going forward.").³

³ Indeed, as this Court has already acknowledged, the revitalization of the City—and in particular, correction of its "service delivery insolvency"—is of "paramount importance in this case." *See Opinion Regarding Eligibility*, Dkt. No. 1945 at 139-40 (noting the City's "services do not function properly due to inadequate funding. The City has an extraordinarily high crime rate; too many street lights do not function; EMS does not timely respond; the City's parks are neglected and disappearing; and the equipment for police, EMS and fire services are outdated and inadequate. . . in seeking chapter 9 relief, the City not only reorganizes its debt and enhances City services, but it also creates an opportunity for investments in its revitalization efforts for the good of the residents of Detroit.") This revitalization, however, is simply not attainable if thousands of retired citizens are left impoverished and if municipal employees have abandoned their posts.

18. The above-cited examples are consistent with this Court’s prior pronouncement that the “business justification for the treatment from the debtor’s perspective” is relevant and “to the extent that issue encompasses consideration of hardship,” the City can “argue and prove that” because that is a “broader and differently focused question than just plain hardship of retirees.”⁴ Dkt. No. 6982-8, Hrg. Trans. 81:9-21, August 6, 2014. Therefore, *all* evidence relating to personal hardship of retirees and actives cannot be excluded at trial because these personal hardships are intertwined with other, undisputedly relevant arguments that will be presented at trial. *Jonasson v. Lutheran Child & Family Servs.*, 115 F.3d 436, 440 (7th Cir. Ill. 1997) (noting a motion *in limine* is proper where the court can “eliminate from further consideration evidentiary submissions that clearly ought not be presented to the jury because they clearly would be inadmissible for *any purpose*”) (emphasis added). Accordingly, the Motions must be denied.

⁴ In Syncora’s Motion, it argued that the Retirement Systems should not be allowed to “backdoor this issue by seeking to introduce evidence of the ‘aggregate’ personal hardship” because “[a]ggregate personal hardship data is just individual personal data in another guise.” Syncora’s Motion at 9, n. 2. But clearly, the aggregate impact of “personal hardship” on entire classes of citizens—when viewed from the perspective of the debtor—is relevant. Thus, contrary to FGIC’s Motion, the Retirement Systems’ argument that the City is justified in considering the need to avoid “wide-scale impoverishment” of thousands of its citizens is relevant and the Court may properly consider it. *See Corrected Brief of the Detroit Retirement Systems in Support of Proposed Treatment of Pension Claims Under “Alternative A” of the Corrected Fifth Amended Plan for Adjustment of Debts of the City of Detroit and Statement of Reservations*, Dkt. No. 6520, at 16-17.

Respectfully submitted,

CLARK HILL PLC

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Dated: August 27, 2014

*Counsel to the Police and Fire Retirement
System of the City of Detroit and the General
Retirement System of the City of Detroit*

Exhibit 1

1 MICHAEL HALL
 2 IN THE UNITED STATES BANKRUPTCY COURT
 3 FOR THE EASTERN DISTRICT OF MICHIGAN
 4
 5
 6 In re) Chapter 9
 7 CITY OF DETROIT, MICHIGAN,) Case No. 13-53846
 8 Debtor.) Hon. Steven W. Rhodes
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 10 _____

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 12
 13 The Videotaped Deposition of MICHAEL HALL,
 14 Taken at 1114 Washington Boulevard,
 15 Detroit, Michigan,
 16 Commencing at 8:57 a.m.,
 17 Wednesday, July 2, 2014,
 18 Before Kathryn L. Janes, CSR-3442, RMR, RPR.
 19
 20
 21
 22
 23
 24
 25

1 MICHAEL HALL
 2 APPEARANCES:
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<p style="text-align: center;">MICHAEL HALL</p> <p>1 Q. Now, the -- the changes to retiree health care 2 and the changes to active employee health care 3 were different, correct? 4 5 A. Correct. 6 Q. The -- what were the differences in the health 7 care benefits going forward as you understood 8 them? 9 A. Going forward, prior to 2014, the benefit packages 10 were basically the same for retirees and active. 11 In January 2014, the retirees were going to get a 12 stipend as opposed to being covered which is a 13 tremendous cost savings for the City. 14 Q. And what were happening to actives? 15 A. Actives would still maintain their health care 16 coverage. 17 Q. Did the cost of it change for actives? 18 A. Yes. 19 Q. Did it go up or down? 20 A. It went up. 21 Q. It went up, so the actives had to bear a larger 22 portion of the cost? 23 A. That's correct. 24 Q. Did the benefits go up or down or were they the 25 same?</p>	<p style="text-align: center;">MICHAEL HALL</p> <p>1 Will they be governed by what's happening to 2 retirees under the plan or will they be governed 3 by a different plan? 4 5 A. If you retire during this calendar year, you're 6 covered under the retiree health care plan that's 7 in place now. 8 Q. That retirees are getting under the plan? 9 10 A. Under the plan. 11 Q. Okay. What if you retire after this calendar 12 year? 13 A. That's not communicated yet. 14 Q. Not known? 15 A. Right. 16 Q. Do you know if that will be a function of the 17 plan in place at the time that that employee 18 retires? 19 A. Repeat the question. 20 Q. Do you know if I retire next year, I'm talking 21 about how it typically works, is it typically the 22 plan that's in place at the time I retire is the 23 plan that I get going forward in my retirement? 24 25 MR. BARNOWSKI: Objection, calls for a legal conclusion. MS. KOVSKY-APAP: Objection,</p>	<p style="text-align: center;">Page 134</p> <p style="text-align: center;">MICHAEL HALL</p> <p>1 A. Benefits basically stayed the same. 2 Q. Okay. 3 A. The coverage wise. 4 Q. So active employees were bearing a larger portion 5 of the cost of their own health care? 6 7 A. Correct. 8 Q. And so were retirees, correct? 9 A. Retirees incur a much -- much larger share. 10 Q. Yeah, so there was a disparity between the two, 11 correct? 12 A. That's correct. 13 Q. And the retirees took the -- they had the harsher 14 change? 15 A. Correct. 16 Q. Okay. And in your judgment, this had a 17 significant negative impact on employees? 18 A. Correct. 19 Q. Because they were now concerned that they would 20 not have health care when they became a retiree? 21 A. That's correct. 22 Q. So do you know if someone retires from the City 23 in December of this year after the bankruptcy may 24 have concluded, okay, do you know what will 25 govern their health care benefits in retirement?</p> <p style="text-align: center;">Page 135</p> <p style="text-align: center;">MICHAEL HALL</p> <p>1 foundation. 2 3 A. The plans can change. 4 BY MR. HACKNEY: 5 Q. And if the plans change, that changes the level 6 of coverage that retirees get as well? 7 MR. BARNOWSKI: Same objection. 8 9 A. The plans can change. 10 BY MR. HACKNEY: 11 Q. I take it, that there's just one set of plans 12 that you're administering at any one time; is 13 that correct? 14 A. At this time, we have a retiree plan and we have 15 an active plan. 16 Q. Well, that was -- okay. So let's strike that. 17 At this time, there are two different 18 plans that you're administering, one that relates 19 to retirees and one that relates to actives, 20 correct? 21 A. Correct. 22 Q. Traditionally was it your understanding that 23 there was just one plan that related to both 24 actives and retirees? 25 A. That's correct. 26 Q. Okay. But now there are two, correct?</p>

1 MICHAEL HALL
 2 **A. Correct.**
 3 Q. And you're saying that you don't know how
 4 employees that will retire after this calendar
 5 year, you don't know whether -- which of the two
 6 plans they'll be -- they'll get health care
 7 benefits under?
 8 **A. That's still in mediation.**
 9 Q. Oh, okay. And was it this calendar year or was
 10 it June 30, 2014?
 11 **A. This calendar year, this calendar year.**
 12 Q. Now, with respect to retiree health care, has
 13 that had an impact when it's come to hiring new
 14 employees?
 15 MS. KOVSKY-APAP: Objection, foundation.
 16 **A. I have no way of knowing.**
 17 BY MR. HACKNEY:
 18 Q. Okay, have you ever seen a situation where you've
 19 lost a new employee or were not able to attract a
 20 new employee because of --
 21 **A. It hasn't been brought to my attention.**
 22 Q. Okay. Do you know how the City's health care
 23 benefits for active employees compare to
 24 surrounding communities?

1 MICHAEL HALL
 2 **A. No.**
 3 Q. Have you ever attempted to study the question of
 4 what surrounding communities are offering when it
 5 comes to their health care benefits?
 6 **A. No.**
 7 Q. Do you know if anyone else has studied that
 8 question?
 9 MS. KOVSKY-APAP: Objection, it's a
 10 little broad.
 11 BY MR. HACKNEY:
 12 Q. At the City or its consultants?
 13 **A. I don't know what benchmarking our consultants did.**
 14 Q. Okay. I take it, you've never seen a study that
 15 says here's what folks around us are doing when
 16 it comes to health care benefits?
 17 **A. No.**
 18 Q. Is that correct, you have not seen that, correct?
 19 **A. I have not seen it.**
 20 MR. HACKNEY: Let's mark this as Number
 21 3.
 22 MARKED FOR IDENTIFICATION:
 23 DEPOSITION EXHIBIT 3
 24 11:36 a.m.

1 MICHAEL HALL
 2 MS. KOVSKY-APAP: There is usually a
 3 button you can push for print friendly copy.
 4 MR. HACKNEY: So I did, and it still
 5 printed it like that, at least on the old one.
 6 The problem with the print button on some of these
 7 things, for whatever reason it strips the date of
 8 the article on it, so I've been going with the
 9 screen print.
 10 MR. BARNOWSKI: These ads are focused
 11 on your browsing patterns.
 12 MR. HACKNEY: Yes, I know. So believe
 13 me, that occurred to me as we were getting ready
 14 for this, I had to make sure there weren't any of
 15 the other types of ads that you could see.
 16 MR. BARNOWSKI: Sorry.
 17 MR. HACKNEY: No, that's okay. I'm in
 18 the market for a trash compactor if anyone has a
 19 recommendation.
 20 BY MR. HACKNEY:
 21 Q. Okay. So do you have Hall Exhibit Number 3 in
 22 front of you?
 23 **A. Yes.**
 24 Q. This is another one of those articles which I'm
 25 using to try and help you remember when certain

1 MICHAEL HALL
 2 things happened. Do you recall, and whether the
 3 article says that or not, you know, your
 4 recollection is obviously independent, but do you
 5 recall that in November that the City announced
 6 that it was going to extend the changes to the
 7 retiree health care; do you recall that?
 8 **A. Yes.**
 9 Q. Did you have input into that decision to extend?
 10 **A. No.**
 11 Q. The basic gist of the extension was that retirees
 12 maintained their existing health care while the
 13 parties continued to negotiate, so it -- it
 14 delayed when the new retiree health care rules
 15 would go into effect; is that correct?
 16 **A. That's correct.**
 17 Q. The City did not change -- the City did not delay
 18 its -- its changes to active employee health
 19 care; isn't that correct?
 20 **A. No, it didn't.**
 21 Q. And when did the active employee changes go into
 22 effect?
 23 **A. January the 1st.**
 24 Q. And did those, in fact, go into effect on
 25 January 1st?

1 MICHAEL HALL

2 **A. To the best of my knowledge.**3 Q. Did the City's announcement here that it was
4 going to delay the implementation of its changes
5 to your retiree health care have an impact that
6 you could discern on the City's workforce?7 **A. Everyone was looking at it because they look that
8 it's going to affect them later on in life.**9 Q. So they were concerned that the way health care
10 was handled with respect to existing retirees
11 might indicate how it would be handled for them
12 when they retired?13 **A. That's correct.**14 Q. Was this one of the most significant concerns
15 that you heard from employees about what was
16 going on in the bankruptcy?17 **A. That and what was going to happen pension wise.**18 Q. Okay. And tell me more about what was going --
19 we'll get into it with the pensions, but what was
20 their concern with respect to pensions?21 **A. You know, what was going to happen to their
22 pensions, you know, going forward, that was a
23 major concern.**24 Q. So they under -- people understood that there was
25 going to be a new pension plan going forward?

1 MICHAEL HALL

2 **A. They thought something was going to happen, they
3 were concerned what, you know, what was going to
4 be their job security -- not job security, but
5 financial security going forward.**

6 Q. Okay.

7 **A. They worked here. They felt as though they had
8 qualified for a pension, what was going to happen,
9 will there be a pension? At what rate? You know,
10 what's going to happen to me?**11 Q. And so their principal concern was about what
12 their pension would be going forward and whether
13 the City could satisfy their pension?14 **A. That's correct.**15 Q. Now, do you understand that there's a bit of a
16 tension with respect to how much you pay retirees
17 versus how much you pay actives because the more
18 money you pay to retirees, the less money that's
19 available to pay actives?20 **A. Okay.**

21 Q. Do you understand -- do you understand that concept?

22 **A. Sort of.**23 Q. Okay. You understand there's a limited amount of
24 money the City has?25 **A. That's correct.**

1 MICHAEL HALL

2 Q. Okay. And did employees convey to you -- did any
3 employees convey to you that they also understood
4 that?5 **A. No.**6 Q. No. So did you notice a change in employee
7 morale or productivity or efficiency, any of the
8 things that go into having an effective workforce
9 between the time of these two announcements, did
10 it have an impact when it came to any of those
11 things?12 MS. KOVSKY-APAP: Objection, he has
13 already testified he hasn't studied employee
14 efficiency.15 **A. No.**

16 BY MR. HACKNEY:

17 Q. You did not determine a change?

18 **A. No.**19 Q. You're aware that Detroit elected a new mayor in
20 the fourth quarter of 2013, correct?21 **A. Correct.**

22 Q. That's Mayor Duggan?

23 **A. Correct.**24 Q. Would you agree that Mayor Duggan has infused a
25 new level of energy into this city?

1 MICHAEL HALL

2 **A. Yes.**3 Q. And do you also agree that Mayor Duggan carries
4 with him the reputation as a reformer?5 **A. Yes.**6 Q. Has his arrival improved the morale of city
7 employees as far as you're able to tell?8 **A. Yes.**9 Q. And has his arrival also made it easier to
10 attract new employees to come work for the City?11 **A. I can't confirm that.**12 Q. By the way, going back to -- how many employees
13 would you say you spoke with that expressed
14 concerns about OPEB health care benefits going
15 forward?16 **A. I can't give a number to it.**

17 Q. Less than ten, more than ten?

18 **A. More than ten.**

19 Q. Less than 50, more than 50?

20 **A. Probably more than 50.**21 Q. And who were the people that expressed these
22 concerns to you?23 MS. KOVSKY-APAP: Objection, are you
24 asking for a list of names?

25 BY MR. HACKNEY:

1 MICHAEL HALL
 2 Q. Anyone that you can remember?
 3 A. **I can tell you union leadership, workers in the**
4 police, fire, employees that work in City Hall,
5 people, employees that work in DDOT.
 6 Q. Is it the same group who expressed concerns about
 7 how pensions were going to be handled?
 8 A. **Just different people at different times,**
9 different subjects.
 10 Q. Is the -- was the principal focus of these
 11 employee concerns, whether it was health care
 12 benefits or pension was what does this mean for
 13 me when I retire, is that the main thing that
 14 they were --
 15 A. **These are general conversations with people**
16 talking about, you know, how is this going to
17 affect me long-term wise, short-term as well as
18 long-term.
 19 MARKED FOR IDENTIFICATION:
 20 DEPOSITION EXHIBIT 4
 21 11:45 a.m.
 22 MR. HACKNEY: What number is this?
 23 COURT REPORTER: 4.
 24 BY MR. HACKNEY:
 25 Q. Okay. So do you have Exhibit Number 4 in front

1 MICHAEL HALL
 2 of you, sir?
 3 A. **Yes.**
 4 Q. And take a -- you should feel to read these, if
 5 you'd like. They're mainly designed to help with
 6 dates different things happened. Do you recall
 7 that the City filed its initial Plan of
 8 Adjustment on or around February 21, 2014?
 9 A. **Okay.**
 10 Q. Do you recall that?
 11 A. **I recall a plan being filed.**
 12 Q. Yeah. What -- you probably don't recall the
 13 specific date?
 14 A. **No.**
 15 Q. Do you recall that the initial plan that the City
 16 filed proposed cuts to earned pension benefits,
 17 is how I'm going to describe it, of differing
 18 amounts for police and fire and general retirees?
 19 MS. KOVSKY-APAP: Objection, form and
 20 foundation.
 21 BY MR. HACKNEY:
 22 Q. Do you recall that the plan involved cuts to
 23 pensions?
 24 A. **Yes.**
 25 Q. And do you recall that the proposed cuts in this

1 MICHAEL HALL
 2 initial plan were 4 percent for police and fire
 3 and 26 percent for general retirees? I know it
 4 says that here, I'm --
 5 A. **It says it here.**
 6 Q. -- wondering if you remember?
 7 A. **I don't recall at that time, but I see it here.**
 8 Q. Yeah, so what I'm trying to ask you, do you
 9 remember there was a time when the City was
 10 proposing steeper cuts to pensions than it's
 11 proposing in the plan that's currently on file?
 12 A. **Yes.**
 13 Q. Do you understand that?
 14 A. **Yes.**
 15 Q. So I want to go back to that, that time when they
 16 were proposing -- I know you may not recall what
 17 the specific levels of cuts were, but I'm talking
 18 about the steeper levels of cuts, okay? Do you
 19 recall that time?
 20 A. **Yes.**
 21 Q. Okay. So does -- does the plan's filing stand
 22 out for you in terms of having had a material
 23 impact on -- on the workforce of the City; do you
 24 remember that time as being one where there was a
 25 significant level of employee activity coming to

1 MICHAEL HALL
 2 you and expressing concern?
 3 A. **Not coming to me to express concern.**
 4 Q. Okay. So that was not something that generated
 5 increased level of activity at your desk?
 6 A. **Not at my desk, no.**
 7 Q. What about in terms of people coming to you and
 8 reporting to you?
 9 A. **Because it affected those people, it was general**
10 conversation around the -- around the building.
 11 Q. Were you consulted in advance of the decision to
 12 file this proposed plan?
 13 A. **No.**
 14 Q. Were you consulted about the level of cuts that
 15 were going to be proposed in this plan?
 16 A. **No.**
 17 Q. Okay. So at the time this plan was proposed, you
 18 were involved in negotiations with the labor
 19 unions, correct?
 20 A. **Correct.**
 21 Q. We're talking February 2014, correct?
 22 A. **Correct.**
 23 Q. But no one from the City came to you to get your
 24 sense of what the appropriate levels of cuts the
 25 pensions could be; isn't that correct?

<p>Page 149</p> <p>1 MICHAEL HALL</p> <p>2 A. That's correct.</p> <p>3 Q. What impact, if any, did this proposal have on</p> <p>4 the City's workforce as far as you could tell?</p> <p>5 A. Concern.</p> <p>6 Q. Okay. Same types of concerns that were expressed</p> <p>7 to you that you've described previously?</p> <p>8 A. That's correct.</p> <p>9 Q. Who did you speak to that expressed concern on</p> <p>10 this subject?</p> <p>11 A. Again, it was general conversation throughout the</p> <p>12 buildings.</p> <p>13 Q. With the same types of groups you told me about</p> <p>14 earlier?</p> <p>15 A. Same types of groups because it affected everyone.</p> <p>16 Q. Now, you understand that active employees have</p> <p>17 some benefits that they've already earned that</p> <p>18 are affected by the cuts to the -- the pension</p> <p>19 trusts?</p> <p>20 A. Repeat that.</p> <p>21 MS. KOVSKY-APAP: Objection to form.</p> <p>22 BY MR. HACKNEY:</p> <p>23 Q. Yeah, do you understand that some active</p> <p>24 employees have pension benefits that they've</p> <p>25 already earned that are impacted by the proposed</p>	<p>Page 151</p> <p>1 MICHAEL HALL</p> <p>2 A. If active employees are affected by the pension</p> <p>3 cuts now?</p> <p>4 Q. Yeah.</p> <p>5 A. Well, what's happening with the active employees</p> <p>6 is a snapshot was taken on the 30th of June, which</p> <p>7 gave them what they would have earned up until</p> <p>8 that time frame, so that -- that's there. And the</p> <p>9 new pension plan would go forward from that point</p> <p>10 onward.</p> <p>11 Q. Okay. So you said it exactly right, which is the</p> <p>12 snapshot is taken of what pension they've already</p> <p>13 earned as of --</p> <p>14 A. June 30th.</p> <p>15 Q. -- June 30th, right. And then going forward</p> <p>16 their pensions are going to be covered by the</p> <p>17 hybrid plan?</p> <p>18 A. That's correct.</p> <p>19 Q. Correct. Do you agree that if active employees</p> <p>20 had concerns about the level of cuts to the</p> <p>21 pensions that they had already earned, that the</p> <p>22 City could have addressed those concerns by</p> <p>23 increasing the terms of the hybrid pension plan</p> <p>24 going forward?</p> <p>25 MS. KOVSKY-APAP: Objection, calls for</p>
<p>Page 150</p> <p>1 MICHAEL HALL</p> <p>2 cuts to pensions?</p> <p>3 A. I guess you have to explain that to me.</p> <p>4 Q. Okay, sure. So do you understand that there are</p> <p>5 these pension trusts out there that have assets</p> <p>6 in them from which employee -- from which retiree</p> <p>7 pensions are paid?</p> <p>8 A. Correct.</p> <p>9 Q. And do you understand that active employees have</p> <p>10 an interest in those pension trusts based on</p> <p>11 amounts that they have earned to date --</p> <p>12 MS. KOVSKY-APAP: Objection, calls for</p> <p>13 a legal conclusion.</p> <p>14 BY MR. HACKNEY:</p> <p>15 Q. -- in their pensions?</p> <p>16 MS. KOVSKY-APAP: Objection, calls for</p> <p>17 a legal conclusion.</p> <p>18 A. I'm really not following you.</p> <p>19 BY MR. HACKNEY:</p> <p>20 Q. That's okay. This stuff is -- maybe I'm getting</p> <p>21 it wrong. I'm trying to say the way I understand</p> <p>22 it. Let me ask it another way.</p> <p>23 Do you know whether active employees</p> <p>24 have -- are impacted at all by these proposed</p> <p>25 pension cuts under the City's plan?</p>	<p>Page 152</p> <p>1 MICHAEL HALL</p> <p>2 speculation.</p> <p>3 A. I don't know.</p> <p>4 BY MR. HACKNEY:</p> <p>5 Q. You don't know?</p> <p>6 A. No.</p> <p>7 Q. Okay. Isn't it just a matter of logic that if</p> <p>8 I'm concerned that you're cutting this part of my</p> <p>9 pension, that the City can address that concern</p> <p>10 by improving this other part of my pension?</p> <p>11 A. No.</p> <p>12 MS. KOVSKY-APAP: Objection, calls for</p> <p>13 speculation.</p> <p>14 A. No. You have to look at funding going forward.</p> <p>15 You know, there's a reason why you were changing</p> <p>16 the plan.</p> <p>17 BY MR. HACKNEY:</p> <p>18 Q. Absolutely, you got to look at funding going</p> <p>19 forward in terms of how much you can put into</p> <p>20 that hybrid pension plan, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And so the more money you have available, the</p> <p>23 more that you could put into the hybrid pension</p> <p>24 plan, correct?</p> <p>25 A. Correct.</p>

Pages 149 to 152

Elisa Dreier Reporting Corp. (212) 557-5558

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Exhibit 2

MAYOR MICHAEL DUGGAN
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

In re) Chapter 9
CITY OF DETROIT, MICHIGAN,) Case No. 13-53846
Debtor.) Hon. Steven W. Rhodes

The Videotaped Deposition of MAYOR MICHAEL DUGGAN, 13
Taken at 2 Woodward Avenue, Suite 500,
Detroit, Michigan,
Commencing at 10:00 a.m.,
Friday, August 1, 2014,
Before Rebecca L. Russo, CSR-2759, RMR, CRR.

1 MAYOR MICHAEL DUGGAN
2 MELVIN BUTCH HOLLOWELL, ESQ.
3 City of Detroit
4 Law Department
5 Coleman A. Young Municipal Center
6 2 Woodward Avenue
7 Suite 500
8 Detroit, Michigan 48226
9 Appearing on behalf of the City of Detroit.
10
11
12

13 DANIEL MORRIS, ESQ.
14 Dentons US LLP
15 1301 K Street, N.W.
16 Suite 600, East Tower
17 Washington, D.C. 20005
18 Appearing on behalf of the Retiree Committee.
19
20
21
22
23
24
25

1 MAYOR MICHAEL DUGGAN
2 APPEARANCES:

4 WILLIAM E. ARNAULT, ESQ.
5 Kirkland & Ellis LLP
6 300 North LaSalle
7 Chicago, Illinois 60654
8 Appearing on behalf of Syncora Guarantee Inc. and
9 Syncora Capital Assurance Inc.

12 THOMAS F. CULLEN, JR., ESQ.
13 DAN T. MOSS, ESQ.
14 Jones Day
15 51 Louisiana Avenue, N.W.
16 Washington, D.C. 20001
17 Appearing on behalf of the City of Detroit.

1 MAYOR MICHAEL DUGGAN
2 COURTNEY ROGERS, ESQ. (Via Telephone)
3 Waller Lansden Dortch & Davis LLP
4 511 Union Street
5 Suite 2700
6 Nashville, Tennessee 37219
7 Appearing on behalf of U.S. Bank National Association,
8 as Trustee for the Water and Sewer Bonds.
9

10
11
12 CHRISTOPHER A. GROSMAN, ESQ. (Via Telephone)
13 Carson Fischer, P.L.C.
14 4111 Andover Road West - Second Floor
15 Bloomfield Hills, Michigan 48302
16 Appearing on behalf of Oakland County.
17
18
19
20
21
22
23
24
25

1 BY MR. ARNAULT:
 2 Q. And do you know if the decision to cut pensions to GRS
 3 and PFRS impacted employee productivity?
 4 A. Again, you know, I didn't objectively measure it. I
 5 know it was a source of great anxiety around the,
 6 around all of the employment centers.
 7 Q. But you don't know whether it impacted productivity?
 8 A. Again, I didn't do any measure whether February was
 9 any different than January. It certainly didn't --
 10 the level of anxiety didn't help anything.
 11 Q. Are you aware that the City intends to utilize a new
 12 pension system on a go-forward basis for active
 13 employees?
 14 A. Yes.
 15 Q. And this is the hybrid pension plan, is that right?
 16 A. Right.
 17 Q. And under the new pension plan, the employees are
 18 going to bear some exposure to market downturns, would
 19 that be fair?
 20 MR. GALLAGHER: Objection, form.
 21 A. Again, I'm not the expert in this.
 22 BY MR. ARNAULT:
 23 Q. Has the City's decision to utilize a new pension
 24 system had any impact on active employee morale?
 25 A. You know, I have not canvassed the employees to see,

1 of all the things that they're stressed about, whether
 2 the hybrid system is the thing that bothers them the
 3 most. I don't know.
 4 Q. So you don't know if the City's decision to utilize a
 5 new pension system has any effect on productivity,
 6 either, would that be fair?
 7 A. Again, I haven't, I haven't segmented out one thing
 8 and surveyed what affect it had, no.
 9 Q. Okay. So you haven't -- when you're looking at
 10 productivity, you're not looking at what specific
 11 impact certain events have on that productivity, is
 12 that right?
 13 A. What I look at is what motivates performance, and
 14 certainly the feeling that the employer is treating
 15 them and dealing with them fairly is a huge impact on
 16 people's performance, and I'm trying to create an
 17 environment where people feel like they're being
 18 treated fairly.
 19 Certainly a number of these things have
 20 caused them to feel they're being treated unfairly,
 21 and I see it in every forum that I go to, but can I
 22 tell you it's this slice or that slice individually?
 23 Collectively, employees have felt treated
 24 unfairly and I think recently feel treated less
 25 unfairly, but ...

1 Q. Why do you say recently that --
 2 A. Instead of twenty-six percent, they're looking at
 3 four-and-a-half percent, so I guess there's a sense
 4 they're being treated less unfairly.
 5 Q. Okay. So you are aware that recently the City has
 6 reduced the cuts to pensions?
 7 A. Yeah.
 8 Q. Okay. And is it your understanding that the agreement
 9 to reduce the cuts to pensions only applies to the
 10 retirees?
 11 MR. MORRIS: Objection, form.
 12 A. I'm not knowledgeable on the ins and outs of all that.
 13 BY MR. ARNAULT:
 14 Q. And so you don't know whether the decision to reduce
 15 the cuts to retirees had any impact on employee
 16 morale?
 17 MR. MORRIS: Objection, form.
 18 Bill, could you speak up just a little
 19 bit --
 20 MR. ARNAULT: Sure.
 21 MR. MORRIS: -- I'm having some trouble.
 22 A. No. Again, I haven't segmented out -- you're asking
 23 me -- I've got 9,000 employees. I have not surveyed
 24 them on which things are impacting which. There is a
 25 sense of, I think, hope in the city now that wasn't

1 there six months ago. How much of that is pension and
 2 how much of that is other things, I don't know.
 3 BY MR. ARNAULT:
 4 Q. Okay. It's not something you can testify about, is
 5 that right?
 6 MR. CULLEN: Objection, foundation, form.
 7 He has testified about it. He's given you his
 8 testimony.
 9 A. So I've answered as best I can.
 10 BY MR. ARNAULT:
 11 Q. Okay. Are you aware, as a general matter, how much
 12 each of the City's creditors are set to receive under
 13 the current plan?
 14 A. Only what I saw in the plan of adjustment.
 15 Q. Okay. So you're aware that the City's pensioners are
 16 set to receive more than, certainly, the financial
 17 creditors?
 18 MR. CULLEN: Objection, foundation, form.
 19 MR. MORRIS: Objection, form.
 20 MR. GALLAGHER: Objection, foundation.
 21 A. I generally understand what the arrangements are, not
 22 in any detail.
 23 BY MR. ARNAULT:
 24 Q. What's your general understanding of the arrangements?
 25 A. That, that the retirees are taking in the general fund

EXHIBIT 3

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:) Chapter 9
)
CITY OF DETROIT, MICHIGAN,) Case No. 13-53846
)
)
) Hon. Steven W. Rhodes
Debtor.)

CERTIFICATE OF SERVICE

The undersigned certifies that on August 27, 2014, The Detroit Retirement Systems' Response in Opposition to Syncora's Motion in Limine Barring the City and Plan Supporters from Introducing Evidence Regarding the Potential Personal Hardship of Pensioners [Dkt. No. 6982] and FGIC's Motion in Limine to Preclude the Introduction of Evidence or Testimony Regarding Certain Matters Previously Deemed Irrelevant by the Court or the City of Detroit [Dkt. No. 6990] was filed using the Court's CM/ECF system, which CM/ECF system will send notification of such filing to all parties of record.

CLARK HILL PLC

/s/ Robert D. Gordon

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System of the City of Detroit and the General
Retirement System of the City of Detroit*

Dated: August 27, 2014